



## Assembly of States Parties

Distr.: General  
1 November 2021

Original: French

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### Twentieth session

The Hague, 6-11 December 2021

# **AUDIT REPORT ON THE ADMINISTRATIVE MANAGEMENT OF THE DEPARTMENTS OF THE PRESIDENCY AND THE OFFICE OF THE PROSECUTOR**



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## I. SUMMARY OF KEY POINTS OF THE AUDIT

The audit of the administrative management of the Presidency and the Office of the Prosecutor shows that the "One Court" principle is applied unequivocally and without undermining the independence of the judiciary and the Office of the Prosecutor.

The administrative functions are mainly performed by the Registry, which deploys digital applications in most support functions, to facilitate exchanges with their users, or disseminate procedures to mobilise its services and organise their interface with operational services. The analysis of budgets and their implementation confirms that the resources allocated to support services are predominantly at the disposal of the Registry: the cost of administrative staff is in the order of €14.5 million (mainly in the Division of Management Services) for 186 posts, compared to €1.9 million in the Office of the Prosecutor with 21.2 posts, and €0.4 million and 2.8 posts at the Presidency.

In 2016 and 2017, under the aegis of the Assembly of States Parties (ASP), an in-depth exercise aimed to identify the "synergies" and remove the duplications detected between the Organs of the Court. This review resulted in some pooling for a limited total amount of savings, namely €582,200, except for possible savings generated by increased effectiveness or efficiency, which have not been valued. This limited assessment indicates, on the other hand, that it is difficult to identify duplications within each entity in the administrative organisation of the Court. However, the Court's efforts in this regard have probably not been sufficiently explained to the ASP. This indirectly raises the question of the participation of the States Parties in the Court governance oversight bodies, the issue of which the External Auditor has just contributed through the specific report requested by the ASP.

Four years after the study about the synergies requested by the ASP, the External Auditor concludes the same observation, after analysing the distribution of administrative responsibilities and their application between the Office of the Prosecutor and the Registry in nine areas related to support services and in an operational area (arrest warrants).

While administrative functions have been reduced to what is strictly necessary at the Presidency and, to a very large extent, within the Office of the Prosecutor, limited progress still remains possible. Accordingly, of the 384 recommendations issued by the Independent Expert Review in its September 2020 report, thirty are administrative in nature. In this context, aware of the considerable workload generated by the monitoring of these 384 recommendations, the External Auditor only makes one recommendation, a priority, whose objective is to formalise the concept of Business Partner, as well as the service provision relations between the Organs. This recommendation would supplement recommendations Nos. 2, 4, 6, 7, 9, 70 and 75 of the independent experts' report.

The implementation of this recommendation would lead to the definition of performance indicators related to the quality of services provided by the administrative and support divisions to the Court. Twenty improvements are suggested in the form of observations over the course of the report's findings, such as the systematic search for co-location of Offices in the countries of the Court with United Nations agencies or missions, and the updating of whistleblower procedures or the monitoring of disciplinary cases.

If other areas of productivity were to be identified within the Court, it would also be in judicial activities and not only in the administrative and support functions. This issue, which inevitably raises the issue of the compatibility of competing, but not incompatible, principles of independence and accountability, should find its response in the recommendation of the independent experts to establish a periodic inspection mechanism for judicial services within the Court, based on peer review.

## II. OBJECTIVES AND SCOPE OF THE AUDIT

1. In accordance with the letter of notification of 15 March 2021, a team of two auditors and an assistant carried out an audit mission at the Headquarters of the International Criminal Court (ICC, also called "Court" in this report) from 5 to 16 July 2021. This mission, initially scheduled for 19 to 30 April 2021, had to be postponed due to the COVID-19 pandemic.

2. Article 12.3 of the ICC Financial Regulations stipulates that *"the External Auditor has the option to make observations on the effectiveness of financial procedures, on the accounting system, on internal financial controls and, in general, on the administration and management of the Court"*. As such, the External Auditor reviewed the performance of the administration of departments at the Presidency and the Office of the Prosecutor.

3. The objective of this audit was to assess the administrative organisation and management of the Presidency and the Office of the Prosecutor, excluding the jurisdictional initiatives and decisions of these two Organs.

4. Based on the findings of the previous audits that he has conducted since the beginning of his mandate, the External Auditor performed the following due diligence:

- identifying the activities of the Presidency and the Office of the Prosecutor that come under, entirely or partially, administrative management, with no direct link to jurisdictional activity;
- measuring, subject to their compliance with the administrative and financial rules of the ICC, the budgetary cost of the programmes of the Presidency the Office of the Prosecutor;
- verifying, under the "One Court" principle, the absence of duplication and/or inconsistencies in administration;
- based on these findings, suggestions aimed at strengthening, in terms of administrative management, the "One Court" principle.

5. The audit did not cover:

- the performance and quality of the services provided by the Registry's central or field services, or by the administrative units identified within the departments of the Presidency or the Office of the Prosecutor, insofar as only the organisation of the services and not their performance was reviewed;
- within Major Programme I , the organisation and operation of the Trial Chambers (sub-programme 1200).

6. The audit was conducted in accordance with the International Standards of Supreme Audit Institutions (ISSAI) on performance auditing. In particular, these standards require the External Auditor to comply with audit ethics rules, exercise professional judgement, and demonstrate critical thinking throughout the audit. The External Auditor focused on verifying that the areas reviewed operated, in all their organisational aspects, in accordance with the principles of economy, efficiency and effectiveness, and seeing if improvements were possible.

7. Each observation and the single recommendation were discussed with the relevant officials at the Presidency, Office of the Prosecutor and Registry. The audit closing meeting was held with these officials on 16 July 2021, and the latter confirmed the validity of the facts presented. The report takes into account their comments and responses, provided in writing on the 3<sup>rd</sup> and 27<sup>th</sup> September 2021

8. The terms of reference for this mission and the list of people met are attached in Appendices No. 1 and 2 of this report.

### III. OBSERVATIONS AND SINGLE RECOMMENDATION

9. The External Auditor, is aware of the fact that the Court is already responsible for implementing all or some of the 384 recommendations arising from the independent experts' report (IER- *Independent Expert Review* of 30 September 2020<sup>1</sup>, under the aegis of a review mechanism placed "under the auspices" of the Assembly of States Parties<sup>2</sup>. As a result, he limited himself to the following single recommendation in conclusion of this report.

**Single recommendation (Presidency, OTP, Registry). The External Auditor recommends, (i) where warranted by the need for a sustainable interface with the Registry's support services, designating Business Partners within Major Programmes I and II and, using Standard Operating Procedures (SOP) endorsed by all parties, and (ii) defining for each partner the responsibilities and expected level of service.**

10. This single recommendation is a **priority 1** (a fundamental point, which requires immediate attention from management and would represent a high risk for the objectives of the Organisation). It does not exclude the External Auditor's "observations" which are included in the body of this report and refer, where applicable, to any of the 384 recommendations of the independent experts' report. The External Auditor considers that his recommendation is part of the implementation of recommendations IER. 2, 4, 6, 7, 9, 70 and 75 of the independent experts' report.

11. The implementation of this recommendation would facilitate the development of relevant performance indicators as a result of the definition, through the suggested standard procedures, of specific, measurable, achievable, realistic and timely ("*SMART*") service levels. This supports the recommendations of the Assembly of States Parties for the adoption and monitoring of result indicators, "*important tool that enables it to carry out its functions, particularly in terms of effective leadership and management, and encourages the Court to continue this work in light of the recommendations made by the Statutory Auditor, and to inform States Parties of the progress of the result indicators*"<sup>3</sup>.

12. In addition to this priority recommendation there are 20 organisational or management observations, the contents of which are summarised in Appendix No. 4 to this report. As indicated above, given the 384 recommendations of the IER, the External Auditor wished not to overload the Court's services and that is why he did not give certain observations, even when they suggest improvements, the official status of recommendation, which would have involved in particular a follow-up by the next External Auditor

<sup>1</sup> Review of the International Criminal Court and the Rome Statute system by independent experts - final report", dated 30 September 2020.

<sup>2</sup> Resolution ICC-ASP/19/Res.7 of 18 December 2020.

<sup>3</sup> Resolution ICC-ASP/18/Res.1 adopted at the 9th plenary session, on 6 December 2019.

#### IV. THE INSTITUTIONAL FRAMEWORK FOR THE ADMINISTRATIVE MANAGEMENT OF THE DEPARTMENTS OF THE PRESIDENCY AND THE OFFICE OF THE PROSECUTOR

13. The principles laid down by the Rome Statute in administrative matters are both clear and difficult to implement, insofar as administrative responsibilities are distributed between the President, Presidency, Office of the Prosecutor and Registry.

##### 4.1. Responsibilities shared between the Court's three main Organs

14. Articulating the requirement for the independence of the Court's three Organs, the "One Court" principle and the objective of economy and efficiency, the Rome Statute results in a rigorous but complex balance.

##### 4.1.1. Administrative responsibilities of the Presidency

15. Article 38, paragraph 3 of the Rome Statute (extract) stipulates that *"the President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for (a) the proper administration of the Court, with the exception of the Office of the Prosecutor; [...]"*.

16. Article 38, paragraph 4 stipulates that "in discharging its under paragraph 3(a), the Presidency shall coordinate with the Prosecutor on all matters of mutual concern.."

17. In this context, the Registrar does not act under the authority of the Presidency but under the authority of the President (see Art. 43.2 below).

##### 4.1.2. Administrative responsibilities of the Office of the Prosecutor

18. Article 42 states that the Office of the Prosecutor shall:

- *"act independently as a separate organ of the Court"* (paragraph 1);
- *"be headed by the Prosecutor" and "have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof."* (paragraph 2).

##### 4.1.3. Administrative responsibilities of the Registry

19. Article 43 specifies that the Registry shall be:

- *"responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.."* (paragraph 1);
- *"headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court."* (paragraph 2).

20. With regard to the staff of the Court, the Rome Statute stipulates in Article 44.1 relating to staff that *"the Prosecutor and the Registrar shall appoint such qualified staff as may be required in their respective offices"*. Article 44.2 even specifies that *"In the employment of staff, the Prosecutor and the Registrar" -[...]*.



21. These principles are set out in the Court's Financial Regulations:

- Rule 101.1, b: *"In his/her capacity as principal administrative officer of the Court, the Registrar shall be responsible and accountable for ensuring that these Rules are administered in a coherent manner by all organs of the Court, including through appropriate institutional arrangements with the Office of the Prosecutor with regard to management and administrative functions falling under the authority of that Office by virtue of article 42, paragraph 2, of the Rome Statute."*;
- Rule 101.1, d: *"to ensure the application of these principles [NDR: efficiency and economy], the Registrar, or respectively the Prosecutor in areas falling under his/her authority by virtue of article 42, paragraph 2, of the Rome Statute, may issue such instructions or establish such procedures as he/she may deem necessary for the administration of these Rules"*.

22. In summary:

- the Presidency is responsible for the proper administration of the Court but not that of the Office of the Prosecutor;
- it acts in coordination with the Prosecutor; issues of common interest are settled by mutual agreement between the two entities;
- the departments of the Presidency are provided by the Registry;
- the Office of the Prosecutor is managed by the Prosecutor;
- the Registrar is primarily responsible for the administration of the Court; he acts under the authority of the President and not under the authority of the Presidency, or especially the Prosecutor;
- the Registrar and the Prosecutor recruit the staff in their departments, and the Registrar recruits staff for the departments of the Presidency;
- the Prosecutor and the Registrar may issue instructions for the application of the Financial Regulations;
- the Registrar is responsible for the proper application of the Financial Regulations by all the Organs of the Court, including, in the context of institutional arrangements, by the Office of the Prosecutor.

#### **4.2. Several internal or external reports addressed the issue of the administration of the Presidency and the Office of the Prosecutor**

##### **4.2.1. The issue is regularly included in the budget resolutions of the Assembly of States Parties**

23. Thus, in its Resolution ICC-ASP/18/Res.1, adopted on 6 December 2019 on the programme budget for 2020, the Assembly of States Parties calls for a *"strategic approach to an improved budgetary process"*. While *"Bearing in mind the independence and confidentiality required to allow the Judiciary and the Office of the Prosecutor to carry out its duties"*, the Assembly of States Parties [extracts]:

- *"3. Stresses the utmost importance of achieving economies of scale, streamlining activities, identifying potential duplications and promoting synergies within as well as between the different organs of the Court;*
- *"4. Welcomes the Court's continued efforts to fully implement the "One-Court principle" when establishing the proposed programme budget, which has resulted in improvements to the budgetary process;*
- *"8. Notes the importance of frequently reconsidering the value of current activity, including any opportunities for redeployment,;;*

- *"9 Requests the Court, in consultation with the Committee, to continue to develop its budgetary process, guided by the Registry, by:*
  - (a) Further strengthening the "One-Court principle" by ensuring that the budget process and its underlying assumptions and objectives are based on coordinated and robust strategic planning and prioritization;*
  - (b) Further enhancing dialogue and information sharing between the Court and States Parties on the assumptions, objectives and priorities which underpin the draft programme budget at an early stage"*

Observation No. 1: "One court", duplications, synergies, economies of scale, redeployment... the call for the rationalisation of structures and procedures and the efficiency and economy of activities is pressing. In respect of the findings contained throughout this report, it was largely heard, with regard to the administrative functions of the Presidency and the Office of the Prosecutor in relation to the services provided by the Registry.

#### 4.2.2. The "synergies" exercise launched in 2015

24. Report CBF/28/12 of 15 March 2017 documents the progress of this exercise launched in November 2015 by the Resolution of the Assembly of States Parties ICC-ASP/14/Res.1 Through this resolution, the ASP highlights *that it is of "the utmost importance of achieving economies of scale, streamlining activities, identifying duplications and promoting synergies within as well as between the different organs of the Court, further stresses therefore the importance of a fullest implementation of the "One-Court-principle" when establishing the proposed programme budget, beginning with the 2017 budget year. This should include improvements to the budgetary process*

25. Pursuant to this Resolution, the Court established an inter-Organ monitoring committee to identify possible duplications and synergies. This Committee commissioned groups of experts to examine from this point of view the sectors identified by the Committee on Budget and Finance (CBF): Language Services, Human Resources, Information and Documentation, Analysis Activities and External Relations.

26. This joint reflection on inter-Organ synergies gave rise to five reports submitted to the CBF:

- 26<sup>th</sup> session, CBF/26/10, report on lessons learned and synergies at the Presidency;
- 26<sup>th</sup> session, CBF/26/13, report on inter-Organ synergies;
- 27<sup>th</sup> session, CBF/27/8, second report on inter-Organ synergies;
- 28<sup>th</sup> session, CBF/28/12, report on inter-Organ synergies;
- 28<sup>th</sup> session, CBF/28/16, report of the Secretariat of the Trust Fund for victims on synergies with the Court.

Observation No. 2: The information submitted to the Assembly of States Parties via the CBF on the progress and results of the "synergies" exercise has been regular.

27. Savings related to posts and operating expenditure, most often quantified, and unquantified efficiency gains have been identified and mostly achieved in the following administrative or support sectors:

- Human Resources (one post in the Office of the Prosecutor; improvement in staff mediation practices);
- Language Services (pool of interpreters; coordination of terminology; optimisation of translation; common translation databases);

- Public Information (training; Office of the Prosecutor newsletter);
- External Relations (joint missions at the start of new investigations; joint negotiation of memoranda of understanding with national authorities; reduced delegations of senior officials at external events);
- Procurement (procurement planning and contract management);
- Mission Planning (identification of mission planning software as a common tool for the Court);
- Information Technology (information management; IT logistics; infrastructure management; software development; information security; training; telecommunications systems).

28. Details of the savings generated, amounting to €252,400 (updated in July 2021) excluding unvalued efficiency gains, are attached in Appendix No. 5.

29. As a reminder, apart from administrative functions, synergies were also found in a few sectors such as witness management or country analyses (one post and subscriptions have been removed).

Observation No. 3: Significant work was produced, which did not, however, lead to substantial savings for an annual budget of approximately €150 million. Nevertheless, the investigations conducted by the External Auditor during this audit show that the synergies identified have been largely exploited. The External Auditor is questioning the efficiency of the intermediation of the Committee of Budget and Finance (CBF) to the States Parties on the efforts deployed by the Organisation. The External Auditor considers that the budget and management Facilitators, or even the Hague Working Group, may have been informed directly of the results of this exercise.

#### 4.2.3. The exercise on the OTP basic size model

30. The reflection undertaken on a basic size model for the Office of the Prosecutor (OTP) was aimed at responding to the request of many States Parties<sup>4</sup> that this Organ be more transparent on its estimated workforce and its budget, as well as the financial implications of its 2016-2018 strategic plan.

31. A task force was established under the presidency of the Head of the Budget Section with representatives of the Presidency, Office of the Prosecutor and the Registry. On the basis of its work, the Court produced three reports submitted to the CBF:

- 25th session, ICC-ASP/14/21, report on the OTP basic size model (17 September 2016);
- 26th session, CBF/26/12, interim report on the impact for the Court of the OTP basic size model (4 April 2016);
- 27th session, CBF/27/10, final report on the Court-wide impact of the OTP basic size model (19 August 2016).

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<sup>4</sup> ICC-ASP/13/Res.1.

32. The work focused mainly on the multi-year projection of judicial activity, with an ambitious extrapolation of the number of cases investigated, prosecuted and adjudicated during the decade 2020. It was noted that the Registry provides a wide range of administrative support to the Court as a whole, primarily focused on the Division of Management Services (DMS) but also generic IT or language services. It was considered that the OTP basic size model should not have a major impact on these areas of the Registry and that any additional need would be examined and agreed transparently between the Organs.

33. The OTP basic size model developed by the working group resulted in a workforce of 540 people, 81 of whom for the services section<sup>5</sup> alone. Compared to the workforce at the time of the Office of the Prosecutor – 405 staff in 2015 (and 425 in 2021<sup>6</sup>), these proposals represented an increase of 33.3% in the workforce and an annual budget of €61 million, compared to €42 million in 2015 (and €45 million in 2021), an increase of 45.2%.

Observation No. 4: The OTP basic size model, which as such did not address the issue of the administrative function in the Office of the Prosecutor, was not retained.

#### 4.2.4. The Independent Expert Review (IER) report of September 2020

34. Through its Resolution ICC-ASP/18/Res.7, on the review of the International Criminal Court and the Rome Statute system, the Assembly of States Parties decided to identify and implement measures to strengthen the Court and improve its results and entrusted this mandate to a group of independent experts.

35. The Independent Expert Review (IER) report of 30 September 2020 makes 384 recommendations, some thirty of which relate to the administration of the Presidency and the Office of the Prosecutor (see the list of these recommendations in Appendix No. 5), based on an approach of decreasing stratification of the jurisdictional function within the Organisation, as defined in Recommendation IER 2:

*“Layer 1, “Judicial and Prosecutorial activity”, is in the hands of the Presidency, the Judges, and the Prosecutor respectively, and requires absolute independence. There can be no auditing by States Parties, ASP or external actors. States Parties should not use their role in the ICC/IO to influence judicial and prosecutorial activity. In Layer 2, the Presidency and the Prosecutor are the leaders. Accountability should be achieved through judicial and prosecutorial auditing, carried out by peers. Inter-court comparisons of performance indicators on issues of administration of justice can further contribute to assessing efficiency in Layer 2. The Registry supports Layers 1 and 2 and, in this regard, the Registrar cooperates with the Prosecutor and acts under the guidance of the Court President”*

36. Layer 3, of a non-jurisdictional nature, is presented by the independent experts as having the classic attributes of an international organisation. The idea of an audit specific to judicial activities, which refers to an inspection of the judicial services as in the best organised ministries of justice, is interesting, even if it would be necessary to refrain from making it a new permanent subsidiary body of the Assembly of States Parties (see External Auditor’s report on governance oversight)..

37. On the issue of current and desirable administrative arrangements, the independent experts recommend in particular:

<sup>5</sup> At that time, the services section included FPCU, LSU and IKEMS.

<sup>6</sup> Approved headcount.

*Recommendation IER 4:*

*“The ICC/IO should function as a unified organisation, with a vertical hierarchical structure. The Registrar is the Chief Administrative Officer, responsible for the development and implementation of administrative processes and policies, including the budget. In this regard, the Registrar should consult other Principals, but – as Chief Administrative Officer – should remain the decision-maker. The One Court principle should be in full effect in Layer 3, through the uniform application and interpretation of administrative processes, ethical standards, staff regulations, values, disciplinary processes and so forth to all staff, regardless of Organ. Uniform, Court-wide instruments and approaches should be prioritised for all aspects of the ICC/IO. There should be no duplication or parallel working groups in different Organs. All staff should be treated the same way, regardless of the Organ they work in, and should be united around the same Court-wide values.”*

Observation No. 5: The findings of this report tend to show that the uniform approach to the applicable standards is already widely in force and that possible duplications are marginal.

38. The independent experts call on the new Prosecutor of the Court to promote greater integration of the administrative functions of OTP and those of the Registry:

*Recommendation IER 6:*

*“The incoming Prosecutor is encouraged to delegate to the Registry, as much as possible, the services/activities within the OTP that pertain to administrative matters (Layer 3).*

*“The OTP and Registry should consult on this issue and on the extent to which the Registry has the capacity to support the OTP’s needs.*

*“States Parties are advised to discuss this matter with candidates for the role of the Prosecutor”.*

Observation No. 6: The findings of this report tend to show that the consultation between OTP and the Registry on administrative matters has already been put into practice.

39. This report was followed by the establishment of a review mechanism by Resolution ICC-ASP/19/Res.7 of 18 December 2020. This mechanism is in particular responsible for:

- submitting a proposal to classify the recommendations of the independent experts;
- forwarding to the Assembly a proposal for a comprehensive action plan with priority ranking of recommendations and proposals for the implementation of the relevant recommendations...

40. Messrs James Stewart, Deputy Prosecutor, Hiran Abtahi, Chef de Cabinet at the Presidency, and Osvaldo Zavala, Senior Special Adviser to the Registrar, were designated focal points of the Court’s three Organs within the review mechanism.

41. A follow-up report<sup>7</sup> with an action plan was submitted to the Assembly of States Parties at the end of June 2021 to assess the follow-up to be given to these numerous recommendations<sup>8</sup>.

<sup>7</sup> Report of the Review Mechanism on the overall progress of its work, 30 June 2021.

<sup>8</sup> Comprehensive action plan for the assessment of the recommendations of the group of independent experts, including requirements for possible further action.

## V. IDENTIFICATION AND BUDGETARY COST OF THE ADMINISTRATIVE ACTIVITIES OF THE PRESIDENCY AND THE OFFICE OF THE PROSECUTOR

42. This inventory and the resulting valuation respond in part to recommendation IER 75 of the independent experts' report: *"A review of the number of administrative support posts required in the Office of the Prosecutor should be prepared for the ASP, together with the specification of the required skills."*

43. The approved headcount for 2021 is as follows for the Court as a whole:

**Table 1: Approved headcount (permanent posts – established posts & contractual posts – GTA FTE) in 2021**

Judicial division	Office of the Prosecutor	Registry	Other	Total
61 (*)	425	630	48	1,164

(\*): of which non-judicial headcount of the Presidency: 11

Source: ICC-ASP/19/10 – 10 September 2020.

44. This table shows that:

- the judicial division of the Court, namely 11 staff at the Presidency (programme 1100) and 40, not including judges, in the Trial Chambers (programme 1200), represents only 5.2% of the total headcount;
- with 425 open positions in the 2021 budget, OTP accounts for 36,5% of all staff in the jurisdiction, and around 40 times the Presidency's workforce.

45. In budgetary terms, the budget for 2020 is as follows:

**Table 2: Breakdown of the budget between Major Programmes, execution 2020 (in euros)**

Organs	section	Cost Centre	Staff Costs	Other Costs	Total costs
MP I Judiciary	Total Judiciary	/	11,168,592	24,897	11,193,489
	The Presidency	1100	951,586	11,134	962,720
	Chambers	1200	10,217,006	13,763	10,230,769
MP II Office of the Prosecutor	Total OTP	/	42,385,016	2,630,526	45,015,542
	Immediate Office of the Prosecutor/Legal Advisory section	2110	1,823,037	30,276	1,853,313
	Services section	2120	3,886,276	550,187	4,436,463
	Information, Knowledge and Evidence Management section	2160	3,210,540	206,442	3,416,983
	Jurisdiction, Complementary and Cooperation Division	2210	3,740,969	102,945	3,843,914
	Investigation Division	2310	18,541,192	1,607,393	20,148,585
	Prosecution Division	2410	11,183,002	133,283	11,316,285
MP III Registry	Total Registry	/	53,381,340	22,276,804	75,658,144
Total programmes			112,452,841	32,520,781	144,973,621

Source: Chief, Finance Section, Registry, International Criminal Court.



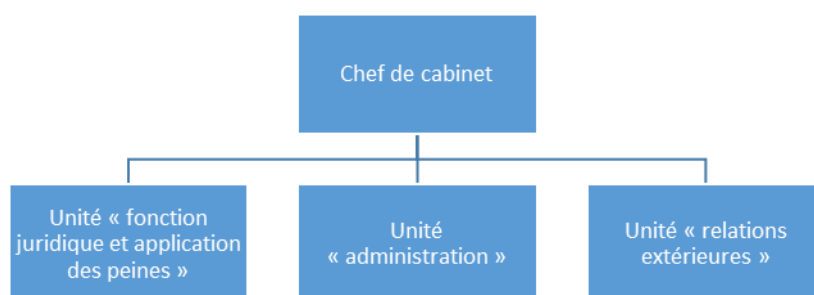
46. The Presidency's operating budget, excluding payroll, is limited with barely more than €11,000. That of the Office of the Prosecutor is much larger, with €2.6 million. But as will be seen below, almost all of the Presidency's operating expenditure is charged to the Registry's allocations, which is not the case for *OTP*.

### 5.1. Administrative management at the Presidency

47. The Presidency is one of the four Organs of the Court. Alongside it are the Chambers organised into three sections, the whole forming Major Programme I, with a budget executed in the amount of €11.2 million in 2020 (programmes 1100 and 1200).

48. The Presidency is organised into three units around the Chef de Cabinet.

**Figure 1: Simplified organisation chart of the Presidency (2020)**



Source: ICC Organisation Manual of December 2020.

49. From a legal point of view, the Presidency constitutes Chambers and assigns cases to them, organises plenary sessions of judges, conducts judicial review of certain decisions of the Registrar, prepares and approves Court-wide administrative decisions, negotiates and concludes cooperation agreements with States and is responsible for the enforcement of prison sentences and fines provided for in Part 10 of the Rome Statute.

50. With regard to the administrative issuances promulgated by the Presidency, the legal and enforcement unit manages nine directives in force at the date of the audit.

**Table 3: List of current Presidency directives**

Reference	Subject	date
ICC/PRESG/G/2020/00 2	Establishment of trust funds at the International Criminal Court	12-June-20
ICC/PRESG/G/2020/00 1	General policy governing the physical reopening of Court buildings, the conditions of access to them and the use of their facilities in the context of the COVID-19 pandemic	5-June-20
ICC/PRESG/G/2016/00 2	Staff regulations	30-Sept-16
ICC/PRESG/G/2016/00 1	General policy governing the physical reopening of Court buildings, and the Court's use by visitors and accredited journalists	30-Aug-16
ICC/PRESG/G/2015/00 1	Audit Committee	13-Feb-15
ICC/PRESG/G/2014/00 3	ICC whistleblowing policy	8-Oct-14
ICC/PRESG/G/2014/00 2	ICC anti-fraud policy	13-May-14
ICC/PRESG/G/2005/00 1	Information security policy	8-March-05

ICC/PRESG/2003/00 1	Procedures for the promulgation of administrative issuances	9-Dec-03
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Source: External Auditor.

51. The Presidency's directives are far from covering all aspects of the management of the Court.

52. In the field of external relations, the Presidency communicates with States, the Assembly of States Parties and its subsidiary bodies, intergovernmental organisations, international and regional courts and civil society in order to increase cooperation, awareness and support for the Court. Informally, an External Relations Working Group meets once or twice a month to discuss and coordinate external relations issues. The group is composed of representatives of the Presidency, the Office of the Prosecutor (*Jurisdiction, Complementarity and Cooperation Division JCCD*) and the Registry (*Division of External Operations - ERSCU/DEO, New York Liaison Office -NYLO, Public Information and Outreach Section- PIOS*).

53. The resources dedicated to administration are limited although the President is the designated superior of the Registrar under Article 43.2 of the Statute. They are pooled with the Chambers, which retain only the minimum human resources prerogatives that cannot be delegated.

54. Out of the 11 posts provided for in the 2021 budget of programme 1100, the administrative posts concern an adviser in the field of regulation (policy) and administration and an assistant whose post was vacant at the date of the audit. Together they form an "administration" unit. In addition, there is a portion of the time spent by the Chef de Cabinet on administrative matters, estimated at 80%.

55. On this basis, based on the standard cost of these posts, the actual cost of the administrative function at the Presidency can be estimated at €281,660 in 2021. It would increase by €107,500 if the position of administrative assistant were filled.

**Table 4: Cost of the administrative function at the Presidency (in euros)**

Grade	Post	% jurisdictional functions	% administrative functions	Standard cost	Jurisdictional cost	Administrative cost
P-5	<i>Chef de Cabinet to the President</i>	20%	80%	185,200	37,040	148,160
P-3	<i>Policy and Administration Adviser</i>	0%	100%	133,500	0	133,500
<b>Total</b>				<b>318,700</b>	<b>37,040</b>	<b>281,660</b>
<b>Position being recruited (for information purposes)</b>						
P-2	<i>Associate Administrative Officer</i>	0%	100%	107,500	0	107,500

Source: External Auditor.

56. In practice, the administrative tasks assigned to the "administration" unit are:

- the preparation and monitoring of the budget in particular through the Budget Working Group
- the secretariat of the Coordination Council (CoCo)
- the supervision of the strategic plan, risk management and the resulting performance indicators;
- the organisation of seminars (retreat) for judges;
- the organisation of the election of the Registrar;
- the appeal of the judges.



57. The expenditure certifying officer for Major Programme I is the Chef de Cabinet of the President.

58. The other support functions are *de facto* delegated to the Registry: human resources, real estate, travel, payments, logistics, procurement and security management.

59. While standard procedures (SOP) are not always formally established, use of the Registry for administrative support is done by means of a series of computer applications (see automated common access procedures table below).

Observation No. 7: The administrative functions carried out by the Presidency are limited to what is strictly necessary and do not show any duplication. Its support is provided almost entirely by the Registry on the basis of the “One Court” principle. This function is performed by the Division of Management Services, which provides services for the entire Court. The budget of this division for 2020 amounted to €19.2 million in 2019 (programme 3200), or 49 times the budget for the administrative functions of the Presidency.

## **5.2. Administrative management within the Office of the Prosecutor**

60. In general, compared to €19.2 million<sup>9</sup> available to the Registry to provide the Court's pooled administrative services, the 2020 approved budget excluding the payroll of the Office of the Prosecutor (Major Programme II) amounted to €4.9 million. Within this amount, €3.1 million (63%) corresponds to travel expenses, €0.5 million (€10%) to purchases of interpreting services, €0.3 million (6%) to equipment related to new technologies or specific computer applications as well as €0.3 million (6%) to training.

61. Travel is the main financial issue. The External Auditor carried out a test on a seminar for 20 staff of the Operational risk and support unit (Operational Risk and Support Unit -ORSU) of OTP, held from 1 to 5 September 2019 in Kampala, to verify the application of rule 5.12 of the standard procedure (SOP) of 18 November 2018 on official travel. It provides for the deduction of hotel and restaurant expenses paid by the Court from daily subsistence allowance (DSA). No anomalies were identified.

62. The computation of administrative positions among the 425 OTP posts, conducted jointly by the External Auditor and the head of the Financial Planning and Control Unit (FPCU), resulted in 21.2 posts connected in whole or in part to administrative functions, or 5% of the entity's workforce:

<sup>9</sup> Of which €14.5 million for payroll, representing 186 posts.

**Table 5: list and cost of administrative posts within OTP (in thousands of euros)**

<b>OTP-HR</b>				
<i>Title</i>		<i>Grade</i>	<i>Number</i>	<i>Cost</i>
HR Liaison and Coordination Officer	Est	P-3	1	121.7
Staff Assistant	Est	GS-OL	1	71.0
<b>Total</b>			<b>2</b>	<b>192.7</b>
<b>Financial Planning &amp; Control</b>				
<i>Title</i>		<i>Grade</i>	<i>Number</i>	<i>Cost</i>
Senior Manager	Est	P-5	1	168.8
Administration Officer	Est	P-3	1	121.7
Associate Administration Officer	Est	P-2	1	98.0
Associate Administration Officer	GTA	P-2	1	106.5
Finance and General Administration Assistant	Est	GS-OL	3	213.0
<b>Total</b>			<b>7</b>	<b>708.0</b>
<b>POS - Admin/Planning Pool</b>				
<i>Title</i>		<i>Grade</i>	<i>Number</i>	<i>Cost</i>
Project Officer	GTA	P-3	1	132.3
Assistant Planning and Control Officer	GTA	P-1	1	106.5
Administrative Assistant	Est	GS-OL	4	284.0
<b>Total</b>			<b>6</b>	<b>522.8</b>
<b>POS - ORSU/Mission Planning</b>				
<i>Title</i>		<i>Grade</i>	<i>Number</i>	<i>Cost</i>
Operations Assistant	Est	GS-OL	2	142.0
Administrative Assistant	Est	GS-OL	3	213.0
<b>Total</b>			<b>5</b>	<b>355.0</b>
<b>POS - ORSU/Management</b>				
<i>Title</i>		<i>Grade</i>	<i>Number</i>	<i>Cost</i>
Head, Operational Risk and Support Unit	Est	P-4	20%	29.32
<b>Total</b>			<b>0.20</b>	<b>29.32</b>
<b>Prosecution Division</b>				
<i>Title</i>		<i>Grade</i>	<i>Number</i>	<i>Cost</i>
Special Assistant (Prosecutions)	GTA	P-3	1	121.7
<b>Total</b>			<b>1</b>	<b>121.7</b>
<b>Grand Total</b>			<b>21.20</b>	<b>1,929.5</b>

Source: FPCU/OTP, in coordination with the External Auditor.

63. By applying the standard costs used in the preparation of the 2021 budget, these 21.2 budget posts represent a payroll of €1.9 million, or 4,2% of the budget of this Organ of the Court.

64. These data show the high level of integration of administrative functions between the Registry and the Office of the Prosecutor. The presence of administrative posts within the departments of the Prosecutor appears to be justified not only by the volume and diversity of the activities carried out but also by the need for an administrative interface and ongoing and smooth relations between the OTP and the Registry.

65. This is how the presence of four managers and three staff in the Financial Planning and Control Unit can be interpreted. The FPCU centralises the budget and expenditure authorisation function for all divisions, sections and units under the authority of the Prosecutor. While Major Programme III, intended for the Registry, has thirty certifying officers, the Major Programmes of the Presidency (I), and the Office of the Prosecutor (II), have only one and four officers respectively certifying expenditure before payment<sup>10</sup>. The ratio between the operating budget and the number of officers certifying expenditure (four certifying officers) is therefore €657,500 in the Office of the Prosecutor. At the Registry<sup>11</sup>, this ratio is €795,600, including field offices, which is of the same order of magnitude.

66. Similarly, the presence of one manager and one staff member within the human resources unit reporting directly to the Prosecutor is considered as an interface with the Human Resources (HR) section of the Registry. The procedures are integrated and governed by the staff regulations. Recruitments, annual evaluation, management of individual situations are carried out by the Registry, the final decision, when required (hiring, rating, advancement, transfer) taken by the Prosecutor with regard to his staff, even if all contracts are signed by the Registrar, head of administration. While the HR section of the Registry suffers from a high rate of job vacancies, it is not certain that the attachment to the Registry of the two posts related to the management of the human resources of the Office of the Prosecutor would lead to an improvement in the service provided, especially as the Prosecutor is an authority for the recruitment and employment of staff under the aforementioned Article 44.1 of the Rome Statute.

67. The External Auditor also notes administrative posts in the Planning and Operations Section (POS) of the Investigation Division, which has 181 posts in the 2021 budget. Three managers (including one at 20% of his time) and nine staff provide internal administrative support for the administrative and financial programming of operations and missions.

68. In normal times, excluding Covid19, OTP orders some 1,500 missions per year, which implies significant logistical and administrative preparation, close to the staff, upstream of the service provided by the Registry's travel agency. The Mission Planning Unit (OSU/MPC) in the Planning and Operations Section of the Investigation Division provides this preparation. The report CBF/27/8 details the verification by internal audit of the Court's mission planning process. In terms of synergies and efficiency gains, this report notes that the Court has improved the mission planning process, does not indicate any duplication, and highlights the complementarity between the Registry's travel section and OSU-MPC. A working group combining consultants, Office of the Prosecutor and Registry has defined the specifications of a mission planning software, which should be commissioned in 2021 and streamline mission management.

69. Finally, one managerial position ensures the administrative interface of the Prosecution Division (105 open positions in the 2021 budget). These P-3 administrative positions, assigned to the investigation and resource planning divisions, have an internal coordination role for the preparation of the draft budget and then its implementation. They also perform a supervisory role within their divisions and serve as a focal point for their relations with the Registry's services.

<sup>10</sup> Internal memorandum of the Registrar, amendment No. 1, of 28 May 2021.

<sup>11</sup> 28 certifying officers, barring error or omission.

70. It is difficult to imagine a complete absence of administrative and financial functions within the Office of the Prosecutor. Confidentiality considerations also justify the availability of close administrative support within OTP. The annual cost of around €900,000 remains limited, given that the service should be provided in any event. In view of these findings and the express provisions of the Rome Statute, it seems legitimate for the Prosecutor to have the resources to prepare, implement and monitor his own budget. These resources remain limited compared to those of the Registry.

Observation No. 8: Some rules should be more defined and formalised. Rule 101.1, d refers to the publication of instructions or procedures deemed necessary for the application of the Organisation's Financial Regulations. Therefore, in each of the areas involving an interface between OTP and the Registry – HR, finance, budget, travel, logistics, etc. – it would be advisable to specify the respective responsibilities, the prerequisites for a service request and the standards of these services. The managers responsible for these administrative interfaces (Business Partners) should be appointed both within OTP and in the Registry.

## VI. DUPLICATIONS OR SYNERGIES BETWEEN PRESIDENCY, OFFICE OF THE PROSECUTOR AND REGISTRY?

### 6.1. The appointment of Certifying Officers

71. As stated above, in accordance with financial rules 110.4, 110.6 and 110.7, one officer is responsible for certifying expenditure at the Presidency and four within OTP.

72. In the spirit of the "One Court Principle", it is the Registrar, who is primarily responsible for the administration of the Court, who appoints the expenditure certifying officers, including, therefore, at the Presidency and in the Office of the Prosecutor, in consultation with the heads of Major Programmes. The interface with the finance section of the Registry is therefore harmonised throughout the jurisdiction.

73. This organisation calls for the following comments:

- at the Presidency, the implementation of the operating budget is under the supervision of the President's *Chef de Cabinet*;
- at OTP, responsibility for the certification of expenditure is centralised on a small team (*FPCU*) for all divisions and sections of this Organ of the Court. This team provides a consistency check of expenditure files and offers a single interface for the entire Office of the Prosecutor with the finance department of the Registry.

Observation No. 9: The current organisation is satisfactory (and apparently properly followed) in terms of the regularity and compliance of the expenditure. It does not seem expensive, nor a source of administrative burdens for the Presidency or for the OTP sections, which are largely relieved of the responsibility for strictly administrative tasks.

### 6.2. Preparation of the budget and monitoring of budget consumption

74. A budget working group (*BWG*) was set up on 5 July 2018 to allow for a coordinated contribution of its Organs and Major Programmes to the process of preparing the Court's draft programme budget. It defines a strategy for the preparation of the draft programme budget and contributes to the promotion of the One Court principle through the budget process. It advises the Coordination Committee (*CoCo*) on budget issues and communications with regard to the States Parties.

75. The *BWG* is composed of representatives of the main Organs of the Court: the Registrar (group chairman); the Director of the Division of Management Services of the Registry; the *Chef de Cabinet* of the Presidency; the head of the *FPCU* unit of OTP; the head of the Budget Section of the Registry. Their role is to put forward the proposals of their respective Organs, while respecting the One Court principle. The *BWG* meets regularly during the first half of the year, during the period preceding the presentation of the proposed programme budget.

76. In addition, the software package for the construction of the programme and sub-programme budget (Budget Planning and Consolidation -BPC) is available on the decision of the Budget Section of the Registry. Of the 125 access authorisations granted to this online tool, seven are granted to the Presidency and OTP.

**Table 6: Authorisations for access to the BPC software package granted to the Presidency and OTP**

Nr	Name	Organ/ Division	Programme/ Sub-programme/ Unit Name	Programme/ Sub-programme/ Unit code	BPC Role
1	Hirad Abtahi	Judiciary	Presidency	1100	Director for MP I
2	Cornell, Sean	Judiciary	Presidency	1100	section Chief for MP I
3	Nezha Chouaibi	Judiciary	Presidency	1100	Admin Assistant for MP I
4	Marco Blasi	OTP	Services section	2120	Director for MP II
5	Maria Pilar Quiroga	OTP	Services section	2120	section Chief for MP II
6	Milena Veizaga	OTP	Services section	2120	Admin Assistant for MP II
7	Yuko Okada	OTP	Services section	2120	Admin Assistant for MP II

Source: Budget section/Registry.

77. Similarly, access to the data on the commitment and liquidation of expenditure in the software package for monitoring the implementation of the Court's budget is extremely centralised, both at the Presidency and in OTP. Out of 157 staff accredited by the Budget Section of the Registry, only six staff in OTP, including the Prosecutor, and two at the Presidency, have access to the SAP budget dashboard. The monthly statement of available appropriations is distributed by FPCU to the heads of division of the Office of the Prosecutor.

Observation No. 10: The design and monitoring of the implementation of the budget are mainly carried out by the Registry. This translates into procedures both the One Court principle and the pre-eminence of the Registrar in administrative and financial matters, in accordance with Article 43.2 of the Rome Statute. This organisation does not prejudice the quality of the management dialogue between the Presidency, the Office of the Prosecutor and the Registry to meet each other's needs in the construction of the draft budget.

### 6.3. Common procedures already automated

78. Even if all the procedures common to the Registry and the Presidency or the Office of the Prosecutor have not been formalised by a Standard Operating Procedure (SOP) and by the appointment of a business partner, many of them have been the subject of automation, developed on the basis of jointly agreed terms of reference.

79. Some are still in the gestation period, such as the new travel management application which will considerably enhance the current version available in SAP by enabling security clearance or medical clearance aspects to be incorporated into it.

**Table 7: Automated common access procedures currently available**

Service	section	Domain	Subject	Organs served
BPC	Budget	Budget Preparation (Figures only)	To facilitate data entry for preparation of the following year's budget	All
Sharepoint (Budget)	Budget	Budget Preparation	To facilitate the submission and update of narratives and budget documents	All
Budget Dashboard	Budget	Budget Implementation / Monitoring	To allow certifying officers to monitor budget implementation in their respective Major Programmes	All

MyHR	Human Resources	Employee Self-Service	To allow employees to inter alia manage their leave and other entitlements; to allow managers to inter alia make requests for new resources and contract extensions	All
Success Factors (Recruitment)	Human Resources	Recruitment	To allow recruitment panels to view applicants' profiles and manage other parts of the recruitment process	All
Success Factors (Performance Management)	Human Resources	Performance Management	To allow managers to set performance targets and submit appraisals; to allow their subordinates to respond to performance targets and appraisals	All
ECOS (Submissions)	Court Management	Filing of Course Documents	To allow parties and the Court to make filings electronically	All
ECOS (Translations)	Court Management	Translation of Documents	For requests related to translation of documents	All
ECOS (Interpretations)	Court Management	Interpretation	For requests for interpretation	All
Ticket System (FMU)	Facilities Management	Facilities Management	For requests for new furniture/equipment and maintenance/management thereof	All
<a href="#">IT Service Management Ticket System (IMSS)</a>	Information Technology & Information Management	Information Technology & Information Management	IT Service Management system that facilitates all requests for IT and Information Management Services provided by IMSS: custom templates with workflows to register, approve and complete all requests for services, equipments, access, new systems etc.	All
SAP	Procurement / Travel	Procurement Processes and Trips	To facilitate the entire procurement process from the raising of requisitions to the payment of vendors; For the planning of trips and payment of related services	All
Visitor Management System	Visitors / New arrivals at the Court	Visitors and new arrivals	To request permission for visitors and new staff/interns/visiting professionals to enter the premises	All
Catering	Catering	Requests for catering (not in use)	To make requests for Catering	All
Library	Library	Requests for Library Services	To facilitate requests for reference desk assistance, access to Library materials, purchase of library materials (e.g. Journal subscriptions, database subscriptions, ebooks, books etc.	All
Transport Requests are done by Email in accordance with the Courtwide SOP - ICC/LTU/2012/002				All

Source: IMSS/Registry.

80. The Court's intranet provides in principle the regulations, circulars, instructions and memoranda in force. However, not all of the SOPs in force are posted online.

Observation No. 11: Automated processes, which increase the fluidity and reliability of administrative procedures, are an asset. However, they should not exempt the Court from adopting the corresponding SOPs, as provided for in the Financial Regulations, as well as from appointing business partners to monitor their proper implementation. All SOPs in force should be posted online.

## 6.4. Human resources management

81. With regard to human resources management at the Court, the independent experts' report makes two important recommendations: ensuring that staff turnover is higher, by limiting to 10 the maximum number of years worked at the ICC<sup>12</sup> (IER Recommendation 105) ; adopting more strategic HR management (IER Recommendation 92). In the case of OTP, these recommendations are particularly relevant as 170 out of 382 staff (44.5%) have been in their positions for more than ten years, including the three grade D1 managers, the latter however having had different assignments. For the Court as a whole, seven out of nine grade D1 managers have been in their positions for more than 10 years.

### 6.4.1. A well-defined HR interface

82. A document entitled "work survey – professional category", signed on 20 April 2009 by the Prosecutor, defines the responsibilities of the P3 category position in charge of human resources within the Immediate Office of the Prosecutor. This manager is responsible for *"advising the Prosecutor and senior management of OTP on all HR issues, representing OTP in the inter-Organ working group of the Court on HR, managing recruitments, including job interviews, preparing HR circulars and SOPs within OTP, monitoring the plan for OTP training (specific training, generic training being managed by the HR section of the Registry) and personal development of staff, intervening in workplace conflict cases, collaborating with OTP and the Registry legal advisers on staff appeals concerning their situation and disciplinary matters and advising the Prosecutor on these issues"*<sup>13</sup>.

83. It is regrettable that only the English language is required for this position, whereas French is one of the two working languages of the Organisation.

84. For its part, the Human Resources section of the Registry consists of two units: the operations unit, which manages the individual rights of staff, including health insurance and pension issues, for all staff, including OTP – this management is fully integrated and available online for staff of all the Organs of the Court; the organisation and development unit, which monitors statutory matters, staff regulations, personnel policies, workforce planning, common training programmes, etc. It has 26 posts included in the budget, eight of which are professional, but suffers from a high vacancy rate with five unfilled posts.

85. From the point of view of the HR section of the Registry, the OTP Liaison Officer acts as a useful human resources business partner. This allows the human resources function to be close to the concerns of staff placed under the authority of the Prosecutor. As a result, the personnel management actions carried out by the HR section on behalf of OTP do not pose any problems, from the perspective of the Office of the Prosecutor. The following applies:

<sup>12</sup> NB: the staff turnover rate at the Court is 4%, which significantly limits any dynamic human resources management.

<sup>13</sup> The Registrar or the Prosecutor, as the case may be, may refer a case to the Disciplinary Advisory Board (DAB) under Chapter X of the staff regulations of the International Criminal Court, ICC-ASP/4/3 of 25 August 2005, drawn up by the Registrar in agreement with the Presidency and the Prosecutor, or specific instructions such as that relating to harassment (administrative instruction ICC/AI/2005/005).



- recruitments: the liaison Officer takes the initiative on behalf of the Prosecutor; the HR section of the Registry publishes the job offer, finalised by mutual agreement with the Office of the Prosecutor; the liaison Officer has access to applications and draws up a shortlist that the HR section ratifies in light of the eligibility criteria (years of experience, educational qualifications); the HR section assists OTP in the planning of interviews, which are conducted by the Office of the Prosecutor alone (panel of at least three persons); OTP writes a report on the interviews with its recommendations; the HR section signs the contract by delegation; the Registrar does not take part in the recruitment process of the Office of the Prosecutor<sup>14</sup>;
- the performance appraisal, carried out by OTP but then centralised by the HR section which keeps a file for each staff member;
- applicable rules on fraud, harassment and protection of whistleblowers, etc.

86. There is no difference in treatment between the staff of the Presidency or the Registry and those of OTP, except for a specific provision for obtaining compensatory rest for staff investigators on assignments working during weekends.

87. The HR section of the Registry also acknowledges that it is important to maintain the confidentiality of the activities of the Office of the Prosecutor. It is therefore positive according to this section to have an HR officer within OTP, close to staff and at the same time competent with regard to human resources management.

88. As a reminder, there are four positions for psychologists within the Court. Since their function is carried out under the same conditions regardless of the individuals whose situation they assess, it could be efficient to have them work in a pool rather than being attached to a particular Organ<sup>15</sup>.

Observation No. 12: In the area of Human Resources management, it would also be advisable to formalise the relationship between the HR section of the Registry and the OTP Liaison Officer by defining more precisely the respective responsibilities, applicable procedures and agreed quality of service. Psychologists' positions would gain from being pooled.

#### 6.4.2. Whistleblowing or disciplinary procedures to be updated

89. Presidential Directive PRES/D/G/2014/003 of 8 October 2014 (Articles 3.2 and 3.3) on whistleblowers:

- refers persons concerned to report an incident that seems to them reprehensible to an "independent oversight mechanism" (Article 3.2);
- provides for a list of persons authorised to receive information from whistleblowers (Article 3.3).

<sup>14</sup> NB: the Organisation does not yet have a document defining its recruitment policy. A document has been announced for the end of the summer 2021.

<sup>15</sup> See IER recommendation of the independent experts 'report encouraging the pooling of all cross-cutting functions at the Court.

90. Prior to the 2014 Presidential Directive, Resolution ICC-ASP/8/Res.1 of 26 November 2009 established an independent oversight mechanism deemed to play a role with regard to whistleblowers insofar as Article 6-b of the Resolution stipulates that *"it is expected that the investigation unit of the newly created independent oversight mechanism will have local investigative powers and incorporate procedures relating to whistleblowers and their protection"*. This provisional wording has therefore not formally established a reporting and protection mechanism in proper and due form. Moreover, contrary to Article 3.2 of the aforementioned Directive, there is no list of persons who may also be notified of allegations of reprehensible incidents by whistleblowers.

91. The Presidency asked the External Auditor to ensure that there were no other informal practices in the other Organs of the Court while recognising that the 2014 Directive was obsolete<sup>16</sup>.

Observation No. 13: The rules on the procedure for reporting incidents by whistleblowers and their protection should be reviewed in order to align them with the standards in force at the United Nations<sup>17</sup> and to harmonise practice between all the Organs of the Court.

92. Finally, the External Auditor notes that the management of disciplinary cases within the Court is very compartmentalised between the Registrar and OTP, even if, in principle, the administrative instruction relating to discipline and the internal rules of the disciplinary advisory board both apply to the entire ICC, including the Office of the Prosecutor. The Human Resources section is not formally involved in disciplinary proceedings, which are managed by the Registry's Legal Office (RLO) or that of the Office of the Prosecutor, depending on the decision-maker concerned.

93. Neither the Human Resources section of the Registry nor the Disciplinary Advisory Board were able to communicate to the External Auditor the number of disciplinary cases they handled with respect to non-OTP staff. For the cases involving staff within the Office of the Prosecutor, they did not have such information. Following the repeated reminders of the External Auditor, this information was finally transmitted.

94. For staff under the Presidency and the Registry, 27 disciplinary cases have been identified since 1 January 2013, mainly cases of harassment. The follow-up to the first nine cases (January 2013 to March 2014) is no longer available. Of the other 18 cases, 15 are related to harassment (once sexual), two to the breach of Court secrecy and one to the misappropriation of property of the Court. Of these 18 traceable cases, 12 resulted in a dismissal. Both cases involving breach of Court secrecy led to the dismissal of the staff in question.

95. As for staff under the Office of the Prosecutor, seven disciplinary proceedings have been reported since 2011, which seems little in comparison to the number of procedures launched at the Registry and the Presidency. Four cases of harassment are identified, including three cases without disciplinary action. Three other cases led to the dismissal without notice of the persons implicated, one for fraud, in 2011, and the other two, in 2018, respectively for activities generating unauthorised revenues and for the disclosure of documents and participation in unauthorised meetings.

<sup>16</sup> E-mail of 14 July, 6.11pm: "In this regards, you may also wish to ask the other organs if they have any informal practices related to this provision. Kindly note that the PD [NDR: President Directive] is out of date with progress in this field. Accordingly, the Court is looking at opportunities to revise this PD and bring it up to date with international best practice."

<sup>17</sup> See for example: "Seventh progress report on the accountability system in the United Nations Secretariat: strengthening the accountability system of the Secretariat under the new management paradigm", A/72/773, 1 March 2018, paragraphs 9 & 10.

Observation No. 14: Information on disciplinary proceedings initiated and sanctions imposed within the Organs of the Court should be available from the Human Resources section of the Registry and the Disciplinary Advisory Board. It should be consolidated for all the Organs of the Court.

## 6.5. Interpreters and translators

96. The Registry and OTP both have interpreters and translators.

97. For OTP, the Language Service Unit (*LSU*) falls under the services section. 30 out of 41 permanent posts provided for in the budget<sup>18</sup> are filled: 14 for translators covering the English, French, Arabic, Georgian and Burmese languages; five for interpretation coordinators; 11 for transcribers from English to French or English to Arabic. In addition, OTP uses contracted service providers. It has a roster of professionals that it can mobilise mainly for field missions according to the needs in each of the roles: 90 translators, 66 interpreters and 28 transcribers. At the date of the audit, 131 contracts were in force within the framework of these language services. In the LSU budget for 2021, the annual salary expenditure, in standard costs, is €4.5 million, while the language services amount to €360,000.

98. In the Registry, the Language Service Section (*LSS*) is located within the Division of Judicial Services and not the Division of Management Services, which encompasses the pooled areas of the Court. This section is structured into five units: the translation support and terminology unit, the interpretation unit, the situation languages translation unit, the situation languages translation unit in English and the situation languages translation unit in French. 54 staff of which 49 in established posts<sup>19</sup> and six in temporary posts (general temporary assistance) work in the section in the following languages: French, English, Sango, Swahili, Tamasheq and Lingala. Like OTP, LSS uses the external services of professionals appearing on a roster. This roster includes 117 professionals. The Registry used 42 of them through a contract in the last 12 months. In 2020, LSS costs were €6.8 million for payroll and €89,698 for other expenditure.

99. This organisation, which cannot be pooled due to the constraints of the separate activities of each Organ, shows that interpreting, translation and transcription services are linked directly to the judicial and jurisdictional functions, prosecution on the one hand and defence on the other.

100. The organisation of LSS/Registry and LSU/OTP, based on permanent skills and ad hoc services through contracts as required, provides flexibility in terms of management. The analysis of the types of posts between LSU and LSS also shows that the transcription function (11 posts) exists only at OTP.

101. Field interpreter selection and training is a common process and described in a standard procedure (SOP) entitled “recruitment and accreditation of freelance field interpreters”. Meetings may sometimes be held informally between the two entities to resolve the difficulties encountered. However, neither the interpreter rosters, nor the situation of the available resources for each of the Organs are shared.

<sup>18</sup> 20 established posts and 21 GTA FTE.

<sup>19</sup> Four posts are vacant and two staff are on long-term leave.

Observation No. 15: While language functions appear in theory as resources that can be pooled, the involvement of the parties in a case, either for the prosecution or for defence, must be taken into account. Their impartiality would be likely to be questioned if they were to be used indiscriminately on either side of the cases. In this context, work on possible synergies in the language segment did not generate substantial savings. The pooling possible in the purchase of common equipment such as online dictionaries was carried out. In any event, with the permanent staff not sufficient to meet the needs of OTP and the Registry, the adjustment variable lies in the use of rosters, which would tend to demonstrate the absence of duplication for both parties.

102. This organisational observation does not call into question the External Auditor's opinion on the effectiveness, efficiency and economy of the resources deployed by LSU and LSS.

## 6.6. Purchases

103. At the Organisation level, the procurement sector consists of three stages: statement of requirements, contract award, contract monitoring. The procurement function is centralised in the Registry in accordance with Article 110.13(a) of the Financial Regulations. According to the Registry's interpretation, it is limited to the awarding of contracts, the award embodied by the Procurement section within the Division of Management Services (DMS). The latter is responsible for concluding the contracts after requisition approved by a certifying officer.

104. In this context, FCPU draws up an OTP procurement plan each year, funded by Major Programme II. In 2020, its budget was €0.7 million. The main purchases concern the many training services (€290,000), accommodation in Bangui (€205,000), the replacement of the investigation management system (€100,000) and the *Mendix* computer application (€55,000).

105. A standard procedure (*SOP*) for the awarding of contracts is established, in particular for setting the procurement methods, the rules for the submission and receipt of bids, and the role of the Procurement Review Committee. Other documents such as the August 2020 memorandum are distributed by the procurement section to help user services, for example, in contract management.

106. In 2016, during the exercise to identify inter-Organ synergies, a procurement planning map was developed to better identify everyone's role at each phase.

107. On 21 December 2020, an internal audit report on the procurement function made nine recommendations, all rated at an "average" risk. The Court rejected four of them, including Recommendation No. 5, which deals with the division of responsibilities in the life cycle of a contract between OTP (FCPU and Information Knowledge Evidence Management Section-IKEMS), the procurement section and IMSS concerning the monitoring of contract deadlines and contract administration. The implementation of this recommendation was referred to procurement process analysis by a consultant. At the date of the audit, this work is still ongoing and should be achieved before the end of 2021.

Observation No. 16: The External Auditor notes that the clarification of responsibilities between the procurement section and the operational units for the monitoring of contracts, in particular with regard to the supervision of the end dates of contracts – necessary in his opinion – must be carried out following an ongoing advisory mission.

## 6.7. IT services

108. For the Court as a whole, two sections operate in the IT field:

- the Information Management Services Section (IMSS) in the Registry, which comprises five units and has 54 staff for 55 open jobs;
- the Information Knowledge Evidence Management Section (IKEMS) at OTP, which is divided into two units (business solutions development unit – information and evidence unit). While this section totalled 36 staff members at the date of the audit, only a fraction of its tasks can be considered as coming strictly under the IT field.

109. The division of tasks is rational. IMSS is responsible for the majority of IT support, namely the supply of equipment, the management of common applications and their access rights, online troubleshooting, management of networks, particularly their infrastructure, data security. All the services provided by the section are formalised by 12 administrative circulars.

**Table 8: Circulars in force on IT services**

- |  |
|--|
| <ul style="list-style-type: none"> <li>- ICC/AI/2006/001 (ENG) - computer and network services policy,</li> <li>- ICC/AI/2006/002 (ENG) - ICC information protection policy for protectively marked information provided by governmental and intergovernmental organisations;</li> <li>- ICC/AI/2006/002 - ANNEX A (ENG) - ICC mapping table for international security classifications ;</li> <li>- ICC/AI/2006/002 - ANNEX B (ENG) - security classification criteria ;</li> <li>- ICC/AI/2007/001 (ENG) - ICC information protection policy;</li> <li>- ICC/AI/2007/002 (ENG) - information security for mobile devices and portable storage media ;</li> <li>- ICC/AI/2007/002 - ANNEX - list of technical controls ;</li> <li>- ICC/AI/2007/003 (ENG) - access control policy ;</li> <li>- ICC/AI/2007/005 (ENG) - information security in agreements with third parties ;</li> <li>- ICC/PRESG/2005/001 (ENG) - information security policy ;</li> <li>- ICC/AI/2015/002 (ENG) - records retention and disposal policy ;</li> <li>- IC/AI/2017/001 (ENG) - establishment of the information management governance board, its composition and TOR.</li> </ul> |
|--|

Source: IMSS.

110. For its part, IKEMS is involved in the management of information and evidence specific to OTP and for its disclosure and archiving. The unit states its specific requirements in collaboration with IMSS when a service is to be ordered by the Registry's contract unit. It remains independent to manage its own applications and databases, with the infrastructures supporting them remaining within the scope of IMSS.

111. Financially, the IT costs of the 2020 budget amounted to €14.2 million<sup>20</sup>, of which €6.5 million in staff expenses and €7.8 million for other expenses. The share covered by OTP is minimal, €1 million including €963,000 million corresponding to the payroll<sup>21</sup>. This shows that almost all of the IT support is provided by the Registry.

Observation No. 17: The issue of duplication and coordination in the IT field between OTP and the Registry was the subject of an extensive analysis as part of the synergies identification exercise conducted in 2016 and 2017. All the recommendations of the report CBF/28/12 of 15 March 2017 have been implemented with the exception of two minor elements<sup>22</sup>. They generated a gain of €330,200, mainly by optimising the contracts.

112. The Registry and OTP continued their work beyond these recommendations. They initiated the mapping of their respective information systems according to the RACI (responsible, accountable, consulted, informed) matrix to identify possible areas of overlap between the two Organs. In addition to the Information Management Governance Board (IMGB), established in January 2017<sup>23</sup> to ensure an integrated approach to IT management procedures and investments within the Court, a bi-monthly meeting is held between IKEMS and IMSS to review all current issues in the IT field.

## **6.8. Analysis of situations by country**

113. There are country analysts in three units of the Court, one in the Office of the Prosecutor and two in the Registry.

114. In the Registry, sub-programmes 3820, "External Operations and Support Section" and 3830, "Victims and Witnesses Section", finance ten posts: three P3, four P2, one GS/PL and two GS/OL, for a total annual standard cost<sup>24</sup> of €1,004,300.

115. Within OTP, the "Planning and Operations" section of the Investigation Division consists of three analysts, two P2 and one P1, for a standard annual cost of €342,500.

116. The juxtaposition of these three analysis units has obviously been identified for a long time. The synergy exercise conducted from 2016 between the two Organs concerned helped save one FTE (P2) and remove duplicate subscriptions to sources such as BBC Intelligence Unit. The Office of the Prosecutor and the Registry also reached an agreement to share part of the information and the cost of licences.

117. It is planned to increase this cooperation by a common approach to identifying, collecting and storing information to avoid analysts looking for the same information from the same sources. The information would be available to analysts of the three units while ensuring the confidentiality of consultations and adopting a common terminology to avoid inconsistencies. Access to the data would be subject to the degree of classification of the information and the tasks of each analyst.

<sup>20</sup> See ICC-ASP/19/10 Annex IX.

<sup>21</sup> The Court has established a five-year strategy to develop its digital capabilities. The cost of the project is €8.2 million, including €0.6 million payable by OTP.

<sup>22</sup> The new information and security management forum has not been launched. However, IMSS plans to update its terms of reference and then activate it in accordance with the recommendations of the independent experts' report. The forum on judicial technologies has been suspended pending the implementation of the Judicial Workflow Platform.

<sup>23</sup> See ICC/AI/2017/001 of 24 January 2017.

<sup>24</sup> Standard costs 2020.



118. The difficulty of this sharing lies in the fact that some of the information collected by the Office of the Prosecutor can provide evidence of a proposed investigation and compromise its chances of success, or even endanger the interested parties (investigation staff and persons interacting with them). Conversely, there must be no risk of affecting the neutrality of the Registry, which should not under any circumstances be seen as carrying out investigations or prosecutions of the Prosecutor. Moreover, if the country-by-country analyses of the Registry units were too generic, it would be necessary to consider the need to pursue them while other bodies regularly produce them, such as UNDSS<sup>25</sup>, DPO<sup>26</sup>, UNHCR<sup>27</sup> or IRIS<sup>28</sup>.

Observation No. 18: The issue of increased pooling between the three units responsible for analysing situations by country involves, in the first analysis, 13 posts, for a total budget of around €1.35 million, excluding subscriptions. Secondly, it involves an objective assessment of the added value contributed by the analyses that they provide, in the light of the strict need for independence of both entities in the conduct of a case. This objective work should be entrusted to an external expert in order to have neutral and operational conclusions.

## **6.9. Operational cooperation between OTP and the Registry within the framework of arrest warrants**

119. A standard operating procedure (SOP) on arrest operations was established in October 2020 and updated on 9 March 2021.

120. Cooperation on arrest warrants issued by the Court is not so much an issue of budget savings through pooling but rather an issue of the greater efficiency of OTP and the Registry. Cooperation between the two Organs involves the exchange of crucial information on the location of suspects and the involvement of local authorities and international organisations.

121. The Court has created a collaborative body between the Registry and OTP: the Suspects-At-Large-Tracking-Team (SALTT). At the date of the audit, ten Registry staff worked on arrests with two investigators and one OTP judicial cooperation adviser. In the form of a working group, these specialists regularly compare their information and sources.

122. The division of roles and responsibilities of the two Organs is being developed. OTP has also identified areas of progress such as the integration of an analyst into the team, the increase, if necessary, of his efforts within the integrated teams, or the appointment of a point of contact within the Assembly of States Parties to obtain support in the monitoring and arrest of suspects, with the establishment of rewards where appropriate.

## **6.10. Field deployments of OTP and Registry teams**

### **6.10.1. Country offices**

123. Staff of the Office of the Prosecutor must frequently travel abroad to conduct investigations or prosecutions. The same applies to the Registry, which deploys its staff to certain States with regard to organising the defence of an accused person.

<sup>25</sup> United Nations Department for Safety and Security.

<sup>26</sup> Department of Peace Operations.

<sup>27</sup> United Nations High Commissioner for Refugees.

<sup>28</sup> *Institut des Relations Internationales et Stratégiques*

124. In practice, OTP is the first Organ to intervene when an investigation is opened. Its presence is as discreet as possible. It sometimes involves renting accommodation. If the case is successful and if it is felt there is a need for a sustainable presence on site for the other programmes, the Registry may consider opening an office. In any event, any accommodation lease is signed by the Registrar, the sole authority authorised to conclude agreements. As part of OTP's own needs, a lease agreement for an apartment in Bangui (Central African Republic) and another for an office in Abidjan (Côte d'Ivoire), funded by Major Programme II, were concluded for respective annual amounts of €205,200 and €30,000 in 2020.

125. Permanent offices are opened by the Registry in six countries (two premises in the Democratic Republic of Congo) which employ 95 staff at the date of the audit and accommodate 15 OTP managers. These country offices are headed by a grade P3 or P5 official of the Registry.

**Table 9: Breakdown of OTP and Registry personnel in field offices**

Location	Registry personnel	OTP personnel
Abidjan	16	4
Bamako	13	3
Bangui	22	4
Bunia	8	-
Kampala	21	1
Kinshasa	9	1
Tbilisi	6	2
<b>Total</b>	<b>95</b>	<b>15</b>

Source: External Auditor from the list of personnel provided by the Human Resources section.

Observation No. 19: It is in the interest of the Organisation to establish a formal mechanism for the review, based on an inter-Organ and annual approach, of the appropriateness of maintaining permanent representation in these different countries.

126. Only the Mali office is located in the complex of the United Nations, the Court arguing that, in many cases, the United Nations would deny it this facility for reasons of impartiality or increased risks.

Observation No. 20: The External Auditor considers that the pooling of premises with peace-keeping missions or United Nations agencies should be systematically sought, for obvious reasons of security, economies of scale and synergies of all kinds, this without prejudice to the confidentiality requirements justifying the maintenance of discrete premises for certain interviews. This observation is in line with the general Recommendations IER 149, 150, 151, 152 of the independent experts' report.

127. Within the field offices, administration and support are provided by Registry staff with the exception of the management of Major Programme II appropriations, which is the responsibility of OPT staff. This organisation does not reveal any possible source of significant savings by pooling between the Registry and OTP.



128. The External Auditor notes that the Division of External Operations (DEO), to which the field Offices report, includes a " Public Information and Outreach Section, for which the supervisor admits there is no Court-wide communication strategy, the Presidency, Office of the Prosecutor and Registry being in a situation of "dynamic tension" for the content of messages delivered. It is conceivable that it is difficult to adopt a line common to the entire ICC due to the dialectic opposing certain respective functions of its Organs. In keeping with a One Court approach, the independent experts' report nevertheless recommended that the Court establish a communication strategy (paragraph 386 of the IER), which is not necessarily incompatible with the expression of the diversity of the viewpoints of the Organs, as the independent experts also recommend.

#### 6.10.2. The New York liaison Office

129. The operating expenditure of this Office (lease of premises, operating costs), previously charged to the Presidency, is now allocated to the budget of the Registry, as is the employment of an administrative assistant who is attached to it.

130. The funding of the position of Head of this Office, (grade P3), is divided equally between the Registry, due to its administrative responsibilities, and OTP (International Cooperation Section), as an interface with the United Nations Office of Legal Affairs (OLA) for the follow-up of ongoing cases. This budgetary arrangement is unrealistic.

## VII. CONCLUSION: RECONCILING THE FUNDAMENTAL PRINCIPLES OF INDEPENDENCE AND ACCOUNTABILITY

131. Important work has already been done by the Organisation to streamline its procedures, structures and methods. It will continue with the implementation under way of all or some of the 384 recommendations of the independent experts' report.

132. The Assembly of States Parties did not receive all the information on the efforts made and the results obtained during the "synergies" exercise conducted by the ICC. This refers indirectly to the problem of limited access by States Parties to the Court governance oversight system, for which the External Auditor is also trying to provide solutions, at the request of the ASP. With regard to the alleged overlap or duplication between the Presidency, OTP and Registry, the information of the States Parties is only partial on what has been undertaken and achieved, which suggests that its information channels have not been fully functioning in this case.

133. There is little to expect in terms of savings and efficiency in the processes and resources of the administrative management of the Court. The workforce and budgets involved are limited and much has been done. But the services expected, the interfaces that control them and the procedures that trigger them, even increasingly automated, remain insufficiently formalised and measurable.

**Single recommendation (Presidency, OTP, Registry). The External Auditor recommends, (i) where warranted by the need for a sustainable interface with the Registry's support services, designating Business Partners within Major Programmes I and II and, using Standard Operating Procedures (SOP) endorsed by all parties, and (ii) defining for each partner the responsibilities and expected level of service..**

134. By further structuring the requests and defining the standards for the provision of services between the Registry on the one hand, and the Presidency and the Office of the Prosecutor on the other hand, the Organisation would gain in terms of the accountability and measurability of its activities, which the Assembly of States Parties has repeatedly requested. The adoption of SOPs would lead to the definition of quality of service levels and, therefore, to result indicators that better reflect the reality of the Registry's activities.

135. The search for productivity gains cannot reside only in the administrative field of the Court, an international organisation according to the three strata typology proposed by the independent experts.



136. In this regard, their recommendation to introduce a form of inspection of judicial services for strata one (jurisdictional) and two (judicial) of the Court deserves attention. While it is neither the responsibility of the internal audit nor the External Auditor to measure the performance of the Court's judicial and jurisdictional activities, this does not imply that this function cannot be entrusted to any entity, nor that strata one and two are released from any principle of accountability. An intermittent but recurring periodic peer review mechanism by peers, on topics determined each year, would allow it to be established without undermining the independence of the Court. Without being required to participate, the External Auditor considers that it falls within the scope of his mandate to recommend the establishment of such a system to contribute to increasing the overall effectiveness and efficiency of the Court whose improvement in judicial and jurisdictional functions can only have positive effects on the improvement of its management.

## **VIII. ACKNOWLEDGEMENTS**

137. The audit team would like to thank the representatives of the Presidency, Office of the Prosecutor and Registry of the Court, as well as those of the States Parties, for their availability and support in the conduct of its audits./.

*End of audit observations.*

## IX. APPENDIX 1: TERMS OF REFERENCE OF THE AUDIT

	<b>Audit of the administrative management of the Services of the Presidency and the Office of the Prosecutor</b>	
<b>Author:</b> Francis Saudubray, Michel Camoin <b>Reviewed by :</b> Ouardia Ali Bey	<b>Terms of reference</b>	<b>Date :</b> March 15, 2021
<b>Diffusion :</b> ICC		

## SCOPE

This performance audit concerns the administrative organization and management of the two independent organs of the ICC, namely the Presidency (which includes the Judges and Chambers) and the Office of the Prosecutor (which includes the services contributing to the exercise of the Prosecutor's functions).

Initiatives and decisions of a jurisdictional nature taken within these two bodies are excluded from the scope of this audit, in accordance with the principle of independence of the Judges and the Prosecutor laid down in the Rome Statute.

## OBJECTIVE

The objective of the audit is, based on the findings made during previous audits conducted by the External Auditor since the beginning of his mandate:

- to identify activities of these bodies which are wholly or partly administrative in nature, without direct link with judicial activity;
- to measure, after checking their compliance with the administrative and financial rules in force at the ICC, their cost within the two Major Programmes managed by each of these bodies;
- to assess the extent to which, in the context of the stated principle of a "One Court", the current distribution and content of these administrative tasks, in relation to the administrative management functions entrusted to the Registry within the overall framework of the ICC, do not lead to situations of duplication and/or inconsistency, and, if so, to propose ways of remedying them in accordance with the current provisions of the Rome Statute.

## METHOD

The audit will be conducted in accordance with the International Standards of Supreme Audit Institutions (ISSAI) on performance and compliance auditing. In particular, these standards require the External Auditor to comply with ethical requirements relevant to the audit, to exercise professional judgement and to exercise critical thinking throughout the audit.

The team will be composed of two senior auditors, magistrates of the French *Cour des comptes* - Mr. Francis Saudubray, Senior Counsellor (*Conseiller Maître*), and Mr. Nicolas Roquet, Counsellor (*Conseiller référendaire*).

The audit work will be carried out based on documents and on-site diligences, and will comprise the following five phases:

- 1) preliminary examination of the internal organization of the two Bodies concerned, and assessment of their overall compliance with the missions of the said Bodies as well as with the cost control objectives set by the Assembly of States Parties;

2) inventory of the administrative management actions carried out by the two Bodies. The essential point, in this initial phase, will be to specify, in consultation with the managers concerned, the delineation between the management activities and the jurisdictional activities they support. This will cover administrative and financial areas and human resources management, including property management, IT management, travel and mission management, support logistics, etc.;

3) measuring the budgetary cost of these activities within each of the budgets of the two major programmes concerned (Major Programmes I and II) and checking that they comply with the administrative and financial rules in force;

4) analysis of the limits of administrative competence between these two organs and the Registry, in order to identify the risks of possible duplication and/or inconsistency of administrative management guidelines within the Court as a whole;

5) based on the findings of phase 4, drawing up recommendations aimed at reinforcing, in terms of administrative management, the principle of a "One Court".

The on-site investigation constitutes a compulsory phase that will condition the drafting of a report.

The Presidency, the Office of the Prosecutor and the Registry will each be willing to designate a focal point for the audit for their respective offices.

## CALENDAR

An initial questionnaire will be sent to the ICC by 20 March 2021, with responses due by 15 April 2021.

The on-site mission will take place from 19 to 30 April 2021 – the schedule of meetings with the relevant officials of the Registry, the Office of the Prosecutor, the Presidency, etc. will have to be set before the start of the mission (maximum 4 meetings per day). Two meetings will also be scheduled at the beginning and end of the audit.

## PREPARATION AND SUBMISSION OF THE REPORT

Two phases are planned:

- Phase 1 (interim report): at the end of its on-site audit, the External Auditor will send an interim report for contradiction;

- Phase 2 (final report): the final report taking into account the responses to the interim report will be transmitted to the Court for presentation to the Assembly of States Parties, after consideration by the *ad hoc* committees (Audit Committee, Budget and Finance Committee), according to the ICC's usual procedures and schedule.

Phase 1 should extend to 1 June 2021, for the final report be submitted in July 2021.

**XI. APPENDIX 2: LIST OF PEOPLE MET****The Presidency**

- Mr Piotr Hofmanski, President;
- Mr Hiram Abtahi, Chief of Cabinet of the Presidency;
- Mr Sean Cornell, Policy and Administration Adviser;
- Mr Marc Perrin de Brichambaut, Judge.

**The Office of the Prosecutor**

- Mr Karim Khan, Prosecutor;
- Mrs Fatou Bensouda, Former Prosecutor;
- Mr James Stewart, Deputy Prosecutor;
- Mr Marco Blasi, Senior Manager Services section;
- Mrs Yuko Okada, Associate Administration Officer;
- Mrs Pilar Quiroga, Associate Administration Officer.

**The Registry**

- Mr Peter Lewis, Registrar;
- Mr Ivan Alippi, Director of Division of Management Services (DMS);
- Mr Christian Mahr, Head of the External Operations Division (DEO);
- Mr Gela Abesadze, Chief of Finance section;
- Mr Sean Walsh, Chief of General Services section (GSS);
- Mr Lassi Kuusinen, Chief of Security and Safety section (SSS);
- Mr Pierre Ronziere, Officer in charge of Budget section;
- Mr Frederic Farschi, Head of Procurement Unit;
- Mrs Karin Oomen, Travel Supervisor;
- Mr Etienne Gouws, Head of Human Resources Operations Unit;
- Mr Zanen Diederick, Officer in charge of Language Services section (LSS);
- Mrs Kelly Mannix, Chief of Information Management Services section (IMSS)

**Others**

- Mr William Roelants de Stappers, Ambassador of Belgium;
- Mr Luis Vassy, Ambassador of France;
- Mrs Florence Bole, Director of the Office of Internal Audit (OIA);
- Mr Richard Veneau, Independent Expert of the Committee for Budget and Finance of the ICC (CBF).

## XII. APPENDIX 3: DETAILS OF THE SAVINGS GENERATED BY THE “SYNERGIES” EXERCISE

	Status update July 2021
<b>(i) Quantified efficiency improvements, for a total of €252,400:</b>	
<b>(1) Analysis</b>	
(a) Effective saving of 1 FTE (P-2) on annual basis (€97,000)	The saving was estimated in light of the 2016 workload. At the time, OTP had three staff in ID-ORSU working in analysis. As one can appreciate from Annex XI in the budget narrative, the Court was seized with 8 situations: Uganda, Darfur, CAR, Kenya, Libya, Cote d'Ivoire and Mali. Five additional situations(+62.5%) have been opened: Georgia, Burundi, Myanmar, Afghanistan and Palestine. The number of staff in ID-ORSU working in analysis has remained unchanged, instead of increasing by 1.87 FTE (+62.5% of 3 staff). The savings have thus been realized.
(b) Removal of duplicate open source analyst subscriptions and sharing of (future) analytical subscriptions and centralization with the Court's library (€56,400)	The savings made in subscription costs can be appreciated by looking at the expenses incurred by the different organs for such subscriptions. Duplication were identified and corrected. For example, there is now one PO for publications/report used by both Registry and OTP, such as BBC Intelligence Unit. This is available in SAP.
<b>(2) Human Resources</b>	
(a) OTP staff administration post returned, giving a recurring annual saving (€36,500)	In 2016 OTP-HR had the following posts: 1. One HR Liaison & Coordination Officer P-3; 2. One Staff Assistant GS-OL; and 3. One GTA Associate HR Liaison Officer P-2 In 2021 OTP-HR had the following posts: 1. One HR Liaison & Coordination Officer P-3; and 2. One Staff Assistant GS-OL
<b>(3) Languages</b>	
(a) Field Interpretation - Efficient use of roster (€5,000)	OTP: The FI recruitment process is a joint Registry/OTP process (notably because of its complexity) which results in a split roster, due to potential conflict of interest/privileged conversation issues. The two services will under some circumstances request if an interpreter can be loaned across to the other service or even theoretically can be transferred from one roster to another.  Reg. The roster for field interpreter deployment is still split and due to the perception of conflict of interest by service users, there remain limitations on the sharing or transferring of field interpreters. However we do have some examples of the efficient use or transfer of field interpreters by both Language Services.
(b) Terminology – Improved coordination (€11,000)	OTP: In 2016, a joint OTP/Registry expert panel for Georgian was held to establish common terminology. Since, then, the provision of front-line activities and available resources mean that terminology has not received the attention the languages services would like to afford it. Reg.: Coordination has improved. For example, the Registry organised a terminology panel for Georgian with the collaboration and active participation of OTP/LSU, but since then we have not had such a large scale terminology project on new situation languages yet because of different needs and different levels of support requirements for different languages
(c) Optimized use of translators (reduced outsourcing) (€13,500)	Whenever a language combination is available in-house in the Registry service, LSU will check availability before outsourcing, and indeed vice

	versa (recent examples where LSU has assisted with Georgian and Dutch, and where LSS has assisted with FRA,DEU
(d) Freelance Translator Database (€900)	OTP: No formal shared translator database exists but where LSU does not have someone on the roster, it will first approach Registry before seeking to source a new one (e.g. Afghanistan languages. Hebrew, Burmese) Reg. there is not an actual Freelance Translator Database; Each Language Service maintains its own roster, but there is on-going collaboration and information sharing. There are also examples of freelance translators for situation languages who work or who have worked for both Language Services, particularly when resources are scarce or when there is a new language need
(e) Language requirements for new Situations (€1,700)	OTP :LSU and LSS (and especially the translation and interpretation teams) have increased the frequency of meetings and information exchanges (where confidentiality allows) to ensure the requirements are shared and explored as soon as possible. There is however no higher level coordination on an organisation level at the opening of an investigation / PE. Reg. The joint field interpreter recruitment and accreditation, already in place in 2015/2016 has continued ever since
(f) Expert Linguist Contacts (€900)	Follows as a corollary of activities under points (d) and (e).
<b>(4) Public Information</b>	
(a) OTP provision of media training (€15,000)	No more training to media is administered and the OTP monthly newsletter has been discontinued.
(b) Reducing time spent on the OTP monthly newsletter (€14,500)	
<b>(ii) Non-quantified efficiency improvements:</b>	
<b>(1) External relations</b>	
(a) Joint missions at commencement of new investigations	Recent examples are the situation in Myanmar (with a joint mission to Bangladesh) and Darfur (with a joint mission to Khartoum). Mediation counselling is used and procured through Procurement. The Court uses external consultants for this, so the only possible synergy is in procurement.
(b) Joint negotiation, wherever possible, of supporting	
Memoranda of Understanding with national authorities involved	
(c) Reduced senior representation, where possible, at external engagements	
(d) Greater use of single spokespersons for the Court’s interests in facilitations etc.	
<b>(2) Human Resources</b>	
(a) Staff mediation practice improvements	

Source: Chief of Staff of the Registrar, on the basis of the report CBF/26/13.



### **XIII. APPENDIX 4: LIST OF OBSERVATIONS IN THE REPORT**

Observation No. 1: One court", duplications, synergies, economies of scale, redeployment... the call for the rationalisation of structures and procedures and the efficiency and economy of activities is pressing. In respect of the findings contained throughout this report, it was largely heard, with regard to the administrative functions of the Presidency and the Office of the Prosecutor in relation to the services provided by the Registry.

Observation No. 2: The information submitted to the Assembly of States Parties via the CBF on the progress and results of the "synergies" exercise has been regular.

Observation No. 3: Significant work was produced, which did not, however, lead to substantial savings for an annual budget of approximately 150 million euros. Nevertheless, the investigations conducted by the External Auditor during this audit show that the synergies identified have been largely exploited. The External Auditor is questioning the efficiency of the intermediation of the Committee of Budget and Finance (CBF) to the States Parties on the efforts deployed by the Organisation. The External Auditor considers that the budget and management Facilitators, or even the Hague Working Group, may have been informed directly of the results of this exercise.

Observation No. 4: The OTP basic size model, which as such did not address the issue of the administrative function in the Office of the Prosecutor, was not retained.

Observation No. 5: The findings of this report tend to show that the uniform approach to the applicable standards is already widely in force and that possible duplications are marginal.

Observation No. 6: The findings of this report tend to show that the consultation between OTP and the Registry on administrative matters has already been put into practice.

Observation No. 7: The administrative functions carried out by the Presidency are limited to what is strictly necessary and do not show any duplication. Its support is provided almost entirely by the Registry on the basis of the One Court principle. This function is performed by the Division of Management Services, which provides services for the entire Court. The budget of this division for 2020 amounted to €19.2 million in 2019 (programme 3200), or 48 times the budget for the administrative functions of the Presidency.

Observation No. 8: Some rules should be more defined and formalised. Rule 101.1, d refers to the publication of instructions or procedures deemed necessary for the application of the Organisation's Financial Regulations. Therefore, in each of the areas involving an interface between OTP and the Registry – HR, finance, budget, travel, logistics, etc. – it would be advisable to specify the respective responsibilities, the prerequisites for a service request and the standards of these services. The managers responsible for these administrative interfaces (business partners) should be appointed both within OTP and in the Registry.

Observation No. 9: The current organisation is satisfactory (and apparently properly followed) in terms of the regularity and compliance of the expenditure. It does not seem to be expensive, nor a source of administrative burdens for the Presidency or for the OTP sections, which are largely relieved of the responsibility for strictly administrative tasks.

Observation No. 10: The design and monitoring of the implementation of the budget are mainly carried out by the Registry. This translates into procedures both the One Court principle and the pre-eminence of the Registrar in administrative and financial matters, in accordance with Article 43.2 of the Statute. This organisation does not prejudice the quality of the management dialogue between the Presidency, the Office of the Prosecutor and the Registry to meet the needs of each other in the construction of the draft budget.

Observation No. 11: Automated processes, which increase the fluidity and reliability of administrative procedures, are an asset. However, they should not exempt the Organisation from adopting the corresponding SOPs, as provided for in the Financial Regulations, as well as from appointing business partners to monitor their proper implementation. All SOPs in force should be posted online.

Observation No. 12: In the area of human resources management, it would also be advisable to formalise the relationship between the HR section of the Registry and the OTP Liaison Officer by defining more precisely the respective responsibilities, applicable procedures and agreed quality of service. Psychologists' positions would gain from being pooled.

Observation No. 13: The rules on the procedure for reporting incidents by whistleblowers and their protection should be reviewed in order to align them with the standards in force at the United Nations and to harmonise practice between all the Organs of the Court.

Observation No. 14: Information on disciplinary proceedings initiated and sanctions imposed within the Organs of the Court should be available from the Human Resources section of the Registry and the Disciplinary Advisory Board. It should be consolidated for all the Organs of the Court.

Observation No. 15: While language functions appear in theory as resources that can be pooled, the involvement of the parties in a case, either for the prosecution or for defence, must be taken into account. Their impartiality would be likely to be questioned if they were to be used indiscriminately on either side of the cases. In this context, work on possible synergies in the language segment did not generate substantial savings. The pooling possible in the purchase of common equipment such as online dictionaries was carried out. In any event, with the permanent staff not sufficient to meet the needs of OTP and the Registry, the adjustment variable lies in the use of rosters, which would tend to demonstrate the absence of duplication for both parties.

Observation No. 16: The External Auditor notes that the clarification of responsibilities between the procurement section and the operational units for the monitoring of contracts, in particular with regard to the supervision of the end dates of contracts – necessary in his opinion – must be carried out following an ongoing advisory mission.

Observation No. 17: The issue of duplication and coordination in the IT field between OTP and the Registry was the subject of an extensive analysis as part of the synergies identification exercise conducted in 2016 and 2017. All the recommendations of the report CBF/28/12 of 15 March 2017 have been implemented with the exception of two minor elements. They generated a gain of €330,200, mainly by optimising the contracts.

Observation No. 18: The issue of increased pooling between the three units responsible for analysing situations by country involves, in the first analysis, 13 posts, for a total budget of around €1.35 million, excluding subscriptions. Secondly, it involves an objective assessment of the added value contributed by the analyses that they provide, in the light of the strict need for independence of both entities in the conduct of a case. This objective work should be entrusted to an external expert in order to have neutral and operational conclusions.

Observation No. 19: It is in the interest of the Organisation to establish a formal mechanism for the review, based on an inter-Organ and annual approach, of the appropriateness of maintaining permanent representation in these different countries.

Observation No. 20: The External Auditor considers that the pooling of premises with peace-keeping missions or United Nations agencies should be systematically sought, for obvious

reasons of security, economies of scale and synergies of all kinds, this without prejudice to the confidentiality requirements justifying the maintenance of discrete premises for certain interviews. This observation is in line with the general Recommendations IER 149, 150, 151, 152 of the independent experts' report.

#### XIV. APPENDIX 5: RECOMMENDATIONS OF THE INDEPENDENT EXPERTS' REPORT IN RELATION TO THE ADMINISTRATIVE MANAGEMENT OF THE PRESIDENCY AND THE OFFICE OF THE PROSECUTOR

Rec. No.	Recommendation
2	R.2 ICC/Court: Layer 1, Judicial and Prosecutorial activity, is in the hands of the Presidency, the Judges, and the Prosecutor respectively, and requires absolute independence. There can be no auditing by States Parties, ASP or external actors. States Parties should not use their role in the ICC/IO to influence judicial and prosecutorial activity. In Layer 2, the Presidency and the Prosecutor are the leaders. Accountability should be achieved through judicial and prosecutorial auditing, carried out by peers. Inter-court comparisons of performance indicators on issues of <b>administration</b> of justice can further contribute to assessing efficiency in Layer 2. The Registry supports Layers 1 and 2 and, in this regard, the Registrar cooperates with the Prosecutor and acts under the guidance of the Court President.
3	R.3 A non-permanent Judicial Audit Committee should be called on to carry out audits of the <b>administration</b> of justice activities in Chambers and OTP. The Judicial Audit Committee should be made up of current or former, national or international judges and prosecutors with relevant experience, appointed similarly to the Committee recommended in R113
4	R4. The ICC/IO should function as a unified organisation, with a vertical hierarchical structure. The Registrar is the Chief Administrative Officer, responsible for the development and implementation of <b>administrative</b> processes and policies, including the budget. In this regard, the Registrar should consult other Principals, but – as Chief <b>Administrative</b> Officer – should remain the decision-maker. The One Court principle should be in full effect in Layer 3, through the uniform application and interpretation of <b>administrative</b> processes, ethical standards, staff regulations, values, disciplinary processes and so forth to all staff, regardless of Organ. Uniform, Court-wide instruments and approaches should be prioritised for all aspects of the ICC/IO. There should be no <b>duplication</b> or parallel working groups in different Organs. All staff should be treated the same way, regardless of the Organ they work in, and should be united around the same Court-wide values.
6	R6. The incoming Prosecutor is encouraged to delegate to the Registry, as much as possible, the services/activities within the OTP that pertain to <b>administrative</b> matters (Layer 3). The OTP and Registry should consult on this issue and on the extent to which the Registry has the capacity to support the OTP's needs. States Parties are advised to discuss this matter with candidates for the role of the Prosecutor.
7	R7. The Registry should take the lead in further integrating offices or units within the Court that perform similar tasks, with the goal of strengthening capacity through <b>pooling</b> or reallocation of resources, and avoiding overlap.

9	R9. The Registrar should be the sole official responsible for developing, updating, interpreting and implementing internal legislative instruments relating to internal <b>administrative</b> matters (ICC/IO). The Registrar should consult the Prosecutor and President in CoCo on the strategic objectives, but should not be required to obtain approval of the latter on the final language and implementation details. The approach of consulting all Organs, implying all Heads of Organs, their support staff and their legal offices, on such details should be discontinued. Where needed, clear deadlines for consultations should be employed, with tacit approval implied after the deadline has passed.
13	R13. The Experts also recommend the Court to follow the UN <b>administrative</b> procedures as a starting base in developing new policies. When needed, the approaches can be tweaked to the Court's needs, taking into account the differences in size of the organisation and mission. The use of UN Common System should also lead the Court and ASP to review the decision to make use of ILOAT rather than the UN Appeals Tribunals.
30	R30. The Presidency and the Registrar should consider updating the job description of the Head of Chambers Staff, by prescribing the relevant reporting lines on <b>administration</b> matters to the Registrar and on judicial matters to the Presidency, through the Chef de Cabinet. The Head of Chambers should report to the Presidency on all matters relating to Layers 1 and 2, and to the Registrar on issues related to Layer 3.
31	R31. The Presidency should consider measures aimed at enabling and empowering the Head of Chambers Staff, including through further delegation of some of their <b>administrative, human resource and other responsibilities</b> .
35	R35. The Presidency and the Registrar should immediately fill the position of <b>Administrative</b> Coordinator of Chambers.
36	R36. The Registrar should update the job description of <b>administrative</b> assistants to Judges. It should be clearly specified that they are <b>administrative</b> and not personal assistants. Consideration should also be given to the designation of appropriate reporting officers for <b>administrative</b> assistants for the purposes of supervision and performance appraisals.
48	R48. The Prosecutor should not reinstate the structure of two Deputy Prosecutors. A more efficient and effective use of the single Deputy Prosecutor can be achieved by defining clear roles and responsibilities. In particular, the Deputy Prosecutor could be assigned the following functions: (i) Ultimate responsibility for the three Divisions and their work; (ii) Overseeing and coordinating the work of the Directors; (iii) Reviewing and approving internal team work products, such as investigation and cooperation plans. They should not be the concern of the Executive Committee (ExCom) save in exceptional circumstances; (iv) Responsibility for issues related to human resources and <b>administrative</b> matters; (v) Responsibility for regularly updating the Prosecutor on the work, progress, and problems of the Divisions.

53	R53. The functions and responsibilities of the Chef de Cabinet should be considerably reduced. They should correspond to those of the senior executive secretary of the Organ, responsible for <b>administrative</b> matters. Strategic and policy related advice should rest with ExCom, the Legal Advisory Section, and the Senior Appeals Counsel. All communications related responsibilities should rest with the PIU and the Special Assistants to the Prosecutor.
63	R63. The relationship between integrated teams and support units (Gender and Children Unit (GCU), Language Services Unit (LSU), <b>Operational Risk and Support Unit</b> (ORSU), Protection Strategy Unit (PSU)) needs to be clarified and standardised. They should be consulted early in the operation planning cycles, in order to avoid delays and additional expenses.
70	R70. In order to address the training needs within the available budget of the OTP, consideration should be given to delegating certain training-related responsibilities to the Registry.
75	R75. A review of the number of posts for <b>administrative</b> support the OTP requires should be prepared for the ASP, together with the specification of the required skills.
77	R77. The Experts recommend making use of the possibility of instating a Deputy Registrar, to enable the Registrar to focus on <b>administration</b> of the ICC/IO (Layer 3). The role would coincide with the Chief of Judicial Services (D-2) position, which would make the decision practically cost-neutral. The Deputy Registrar should be elected in the same manner recommended for the Registrar, and if possible simultaneously. The ASP could consider having candidates apply jointly, as a pair, for the positions of Registrar and Deputy Registrar, and electing them as such, to promote gender and geographic diversity. A similar approach should be considered by the ASP for the joint election of the Prosecutor and Deputy Prosecutor.
117	R117. Instead of peer-based appeals against <b>administrative decisions</b> , a straightforward and simple procedure could be set up by employing a First Instance Dispute Judge – a national or international judge, with experience in international administrative matters. The First Instance Dispute Judge would not be a permanent position, but called on to act on a need-basis. A roster of suitable judges could be set up 103 for such purpose. In the case of serious complaints against Judges, the Prosecutor or Deputy Prosecutor, a First Instance Panel, made up of three judges, would decide in first instance.
119	R119. Recourse to mediation services would only be mandatory for parties in an <b>administrative</b> dispute before bringing their complaint to the First Instance Judge. Similarly, complaints dealing with underperformance would initially be reviewed by a human resources analyst and, if necessary, by an independent reviewer appointed by the Head of HRS, before the complaint could be submitted to the First Instance Judge.

120	R120. The Court is encouraged to explore whether resorting to the UN Appeals Tribunal for <b>administrative</b> matters, rather than the ILOAT, would be more cost efficient for the Court. Such a decision would also be in line with the Court's use of the UN Common System.
143	R143. States Parties should consider joint approaches with other international courts and tribunals housed in The Hague, such as organising joint trainings, <b>pooling administrative</b> services and exploring possibilities for joint procurement to obtain more advantageous rates.
286	R286. The OTP should strengthen the <b>SALTT</b> by appointing an additional analyst/investigator.
322	R322. Regarding internal organic structures, reshaping the current office for the Defence (OPCD) by entrusting it with additional responsibilities would improve efficiency of governance and of <b>administration</b> , increase budgetary transparency, provide a strategy for Defence Services, enhance accountability, and ensure appropriate representation of the Defence in the ACLT.
335	R335. As recommended elsewhere, in line with the One Court principle, the Court wellbeing framework (including for example the system foreseen by the <b>Administrative Instruction</b> on harassment, access to OHU) and disciplinary procedures should be extended to support staff (See supra Section I.A.1(2) and R4 (p.18); see also supra Section ICC/IO GovernanceIV.B.4. Judicial Council of the Court R115 (p.102)).
354	R354. Increased efficiency and effectiveness could be gained if the TFV is focused on its original mission as a trust fund, with functions restricted to fundraising, <b>administration</b> of the funds, and release of the funds as ordered by the Court.